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ALEXANDRIA, VA 22313-1450  
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Michael F. Brown  
BROWN & MICHAELS, PC  
400 M&T BANK BUILDING  
118 NORTH TIOGA ST.  
ITHACA, NY 14850

In re Application of	:	DECISION ON
BROWN, David C.	:	
Application No. 10/599,805	:	
PCT No.: PCT/US2004/031150	:	
Int. Filing Date: 22 September 2004	:	PETITION UNDER
Priority Date: 22 September 2003	:	
Attorney's Docket No.: SN1-11	:	
For: DIODE-PUMPED MICROLASERS INCLUDING	:	37 CFR §1.137(b) AND
RESONATOR MICROCHIPS AND METHODS	:	
FOR PRODUCING SAME	:	37 CFR §1.182

This petition decision is in response to Applicant's "Petition For Revival Of An International Application For Patent Designating The U.S. Abandoned Unintentionally Under 37 CFR 1.137(b)," filed on 10 October 2006 and to Applicant's communication filed 08 January 2007 requesting the Office to correct USPTO records as to the number of the PCT application that is associated with national stage application 10/599,805. The 08 January 2007 communication has been treated as a petition under 37 CFR §1.182. The Petition under 37 CFR §1.137(b) identifies the Applicant as being entitled to small entity status. The small entity fee for the Petition under 37 CFR §1.137(b) in the amount of \$750 was paid by deposit account 11 October 2006. The fee of \$400 under 37 CFR §1.17(f) for the petition under 37 CFR §1.182 will be charged to Applicant's deposit account as authorized in that petition.

**BACKGROUND**

The above-identified international application has a priority date of 22 September 2003. Under 37 CFR §1.495(b), Applicant must submit the items identified in 37 CFR §1.495(b) no later than 30 months from the date of priority to avoid abandonment. In the instant application, the thirty-month date would be 22 March 2006. The instant application became abandoned as to the United States on 23 March 2006 for failure to pay the basic national fee.

On 10 October 2006, a "Transmittal Letter To The United States Designated/Elected Office (DO/EO/US) Concerning A Submission Under 35 USC 371" was received in the United States Patent and Trademark Office (USPTO) including the required fees. The 10 October 2006 Letter was accompanied by a "Petition For Revival Of An International Application For Patent Designating The U.S. Abandoned Unintentionally Under 37 CFR 1.137(b)" with the small entity petition fee of \$750 as provided for in 37 CFR §1.17(m).

On 08 January 2007, Applicant submitted the petition under 37 CFR §1.182 along with deposit account authorization for the required fee and copies of documents that were filed with the USPTO at the filing of the national stage application 10/599,805.

### **DISCUSSION**

#### **I. Petition Under 37 CFR §1.182**

Applicant's communication of 08 January 2007 requests the Office of PCT Legal Administration to resolve the discrepancy between the PCT application number identified on the electronic acknowledgement receipt, i.e. PCT/US04/03115, and the PCT application number identified in the national stage documents filed 10 October 2006, i.e. PCT/US04/31150. Because the electronic acknowledgement receipt reflects data input by applicant, the request has been treated as a petition under 37 CFR 1.182. With the petition under 37 CFR §1.182, Applicant has submitted copies of the Declaration and Power of Attorney for the national stage application; a copy of the Transmittal Letter (Form PTO-1390) for the national stage application; the Petition to Revive under 37 CFR §1.137(b) for the national stage application; and the Application Data Sheet for the national stage application. Each of these documents identifies the corresponding PCT application number as PCT/US2004/031150. It is further noted that the title of PCT/US2004/031150 is identical to the title of national stage application 10/599,805, and that the title of PCT/US2004/03115 is totally different from the title of the national stage application 10/599,805. This evidence is sufficient to establish that the submission filed 10 October 2006 should be processed as the U.S. national phase application of the international application number PCT/US2004/031150.

II.

Petition Under 37 CFR §1.137(b)

Under 37 CFR §1.137(b), a grantable petition for revival of an unintentionally abandoned application must be accompanied by: (1) the reply required to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in 37 CFR §1.17(m); (3) a statement under 37 CFR §1.137(b)(3) that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR §1.137(b) was unintentional; and (4) any terminal disclaimer that may be required under 37 CFR §1.137(d).

The Petitioner has submitted the basic national filing fee (small entity) of \$150, has submitted the petition fee (small entity) of \$750, and has stated that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR §1.137(b) was unintentional. No terminal disclaimer is required.

**DECISION**


For the reasons set forth above, the petition under 37 CFR §1.182 is hereby **GRANTED**.

For the reasons set forth above, the petition under 37 CFR §1.137(b) is hereby **GRANTED**.

It is noted that the "Notice of Acceptance of Application under 35 USC 371 and 37 CFR 1.495" (Form PCT/DO/EO/903) was mailed prematurely, i.e., prior to the decision on the petition under 37 CFR 1.137(b). In view of the decision rendered herein, the previously mailed "Notice of Acceptance of Application under 35 USC 371 and 37 CFR 1.495" (Form PCT/DO/EO/903) is hereby ratified.

This application is being forwarded to the appropriate Technology Center to await examination in due course.

Bernarr Gregory  
Office of PCT Legal Administration  
Tel.: (571) 272-6094  
FAX: (571) 273-0459

  
Boris Milef  
Legal Examiner  
Office of PCT Legal Administration